

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
CONFERENCE COMMITTEE SUBSTITUTE FOR
HOUSE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILLS NOS. 915, 710 & 907

91ST GENERAL ASSEMBLY

2002

3541S.27T

AN ACT

To repeal sections 142.803, 144.020, 144.021, 144.440, 144.700 and 226.200, RSMo, relating to measures to increase funding for transportation, and to enact in lieu thereof eight new sections relating to the same subject, with a referendum clause, effective date and a contingent termination date for certain sections.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 142.803, 144.020, 144.021, 144.440, 144.700 and 226.200, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 142.803, 144.020, 144.021, 144.440, 144.700, 226.094, 226.200 and 226.1000, to read as follows:

142.803. 1. A tax is levied and imposed on all motor fuel used or consumed in this state as follows:

(1) Motor fuel, seventeen cents per gallon. [Beginning April 1, 2008, the tax rate shall become eleven cents per gallon] **Beginning on the effective date of this act, the motor fuel tax rate shall be twenty-one cents per gallon;**

(2) Alternative fuels, not subject to the decal fees as provided in section 142.869, with a power potential equivalent of motor fuel. In the event alternative fuel, which is not commonly sold or measured by the gallon, is used in motor vehicles on the highways of this state, the director is authorized to assess and collect a tax upon such alternative fuel measured by the

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

nearest power potential equivalent to that of one gallon of regular grade gasoline. The determination by the director of the power potential equivalent of such alternative fuel shall be prima facie correct;

(3) Aviation fuel used in propelling aircraft with reciprocating engines, nine cents per gallon as levied and imposed by section 155.080, RSMo, to be collected as required under this chapter.

2. All taxes, surcharges and fees are imposed upon the ultimate consumer, but are to be precollected as described in this chapter, for the facility and convenience of the consumer. The levy and assessment on other persons as specified in this chapter shall be as agents of this state for the precollection of the tax.

144.020. 1. A tax is hereby levied and imposed upon all sellers for the privilege of engaging in the business of selling tangible personal property or rendering taxable service at retail in this state. The rate of tax shall be as follows:

(1) Upon every retail sale in this state of tangible personal property, including but not limited to motor vehicles, trailers, motorcycles, mopeds, motortricycles, boats and outboard motors, a tax equivalent to four **and one-half** percent of the purchase price paid or charged, or in case such sale involves the exchange of property, a tax equivalent to four **and one-half** percent of the consideration paid or charged, including the fair market value of the property exchanged at the time and place of the exchange, except as otherwise provided in section 144.025;

(2) A tax equivalent to four **and one-half** percent of the amount paid for admission and seating accommodations, or fees paid to, or in any place of amusement, entertainment or recreation, games and athletic events;

(3) A tax equivalent to four **and one-half** percent of the basic rate paid or charged on all sales of electricity or electrical current, water and gas, natural or artificial, to domestic, commercial or industrial consumers;

(4) A tax equivalent to four **and one-half** percent on the basic rate paid or charged on all sales of local and long distance telecommunications service to telecommunications subscribers and to others through equipment of telecommunications subscribers for the transmission of messages and conversations and upon the sale, rental or leasing of all equipment or services pertaining or incidental thereto; except that, the payment made by telecommunications subscribers or others, pursuant to section 144.060, and any amounts paid for access to the Internet or interactive computer services shall not be considered as amounts paid for telecommunications services;

(5) A tax equivalent to four **and one-half** percent of the basic rate paid or charged for all sales of services for transmission of messages of telegraph companies;

(6) A tax equivalent to four **and one-half** percent on the amount of sales or charges for all rooms, meals and drinks furnished at any hotel, motel, tavern, inn, restaurant, eating house,

drugstore, dining car, tourist cabin, tourist camp or other place in which rooms, meals or drinks are regularly served to the public;

(7) A tax equivalent to four **and one-half** percent of the amount paid or charged for intrastate tickets by every person operating a railroad, sleeping car, dining car, express car, boat, airplane and such buses and trucks as are licensed by the division of motor carrier and railroad safety of the department of economic development of Missouri, engaged in the transportation of persons for hire;

(8) A tax equivalent to four **and one-half** percent of the amount paid or charged for rental or lease of tangible personal property, provided that if the lessor or renter of any tangible personal property had previously purchased the property under the conditions of "sale at retail" as defined in subdivision [(8)] **(10)** of section 144.010 or leased or rented the property and the tax was paid at the time of purchase, lease or rental, the lessor, sublessor, renter or subrenter shall not apply or collect the tax on the subsequent lease, sublease, rental or subrental receipts from that property. The purchase, rental or lease of motor vehicles, trailers, motorcycles, mopeds, motortricycles, boats, and outboard motors shall be taxed and the tax paid as provided in this section and section 144.070. In no event shall the rental or lease of boats and outboard motors be considered a sale, charge, or fee to, for or in places of amusement, entertainment or recreation nor shall any such rental or lease be subject to any tax imposed to, for, or in such places of amusement, entertainment or recreation. Rental and leased boats or outboard motors shall be taxed under the provisions of the sales tax laws as provided under such laws for motor vehicles and trailers. Tangible personal property which is exempt from the sales or use tax under section 144.030 upon a sale thereof is likewise exempt from the sales or use tax upon the lease or rental thereof.

2. All tickets sold which are sold under the provisions of sections 144.010 to 144.525 which are subject to the sales tax shall have printed, stamped or otherwise endorsed thereon, the words "This ticket is subject to a sales tax."

144.021. The purpose and intent of sections 144.010 to [144.510] **144.525** is to impose a tax upon the privilege of engaging in the business, in this state, of selling tangible personal property and those services listed in section 144.020. The primary tax burden is placed upon the seller making the taxable sales of property or service and is levied at the rate provided for in section 144.020. Excluding sections 144.070, 144.440 and 144.450, the extent to which a seller is required to collect the tax from the purchaser of the taxable property or service is governed by section 144.285 and in no way affects sections 144.080 and 144.100, which require all sellers to report to the director of revenue their "gross receipts", defined herein to mean the aggregate amount of the sales price of all sales at retail, and remit tax at four **and one-half** percent of their gross receipts.

144.440. 1. In addition to all other taxes now or hereafter levied and imposed upon

every person for the privilege of using the highways or waterways of this state, there is hereby levied and imposed a tax equivalent to four **and one-half** percent of the purchase price, as defined in section 144.070, which is paid or charged on new and used motor vehicles, trailers, boats, and outboard motors purchased or acquired for use on the highways or waters of this state which are required to be registered under the laws of the state of Missouri.

2. At the time the owner of any such motor vehicle, trailer, boat, or outboard motor makes application to the director of revenue for an official certificate of title and the registration of the same as otherwise provided by law, he shall present to the director of revenue evidence satisfactory to the director showing the purchase price paid by or charged to the applicant in the acquisition of the motor vehicle, trailer, boat, or outboard motor, or that the motor vehicle, trailer, boat, or outboard motor is not subject to the tax herein provided and, if the motor vehicle, trailer, boat, or outboard motor is subject to the tax herein provided, the applicant shall pay or cause to be paid to the director of revenue the tax provided herein.

3. In the event that the purchase price is unknown or undisclosed, or that the evidence thereof is not satisfactory to the director of revenue, the same shall be fixed by appraisement by the director.

4. No certificate of title shall be issued for such motor vehicle, trailer, boat, or outboard motor unless the tax for the privilege of using the highways or waters of this state has been paid or the vehicle, trailer, boat, or outboard motor is registered under the provisions of subsection 5 of this section.

5. The owner of any motor vehicle, trailer, boat, or outboard motor which is to be used exclusively for rental or lease purposes may pay the tax due thereon required in section 144.020 at the time of registration or in lieu thereof may pay a use tax as provided in sections 144.010, 144.020, 144.070 and 144.440. A use tax shall be charged and paid on the amount charged for each rental or lease agreement while the motor vehicle, trailer, boat, or outboard motor is domiciled in the state. If the owner elects to pay upon each rental or lease, he shall make an affidavit to that effect in such form as the director of revenue shall require and shall remit the tax due at such times as the director of revenue shall require.

6. In the event that any leasing company which rents or leases motor vehicles, trailers, boats, or outboard motors elects to collect a use tax, all of its lease receipt would be subject to the use tax, regardless of whether or not the leasing company previously paid a sales tax when the vehicle, trailer, boat, or outboard motor was originally purchased.

7. The provisions of this section, and the tax imposed by this section, shall not apply to manufactured homes.

144.700. 1. All revenue received by the director of revenue from the tax imposed by sections 144.010 to 144.430 and 144.600 to 144.745, **including any payments of taxes made under protest, shall be deposited in the state general revenue fund** except [that] for:

(1) The revenue derived from the rate of one cent on the dollar of the tax which shall be held and distributed in the manner provided in sections 144.701 and 163.031, RSMo[, shall be deposited in the state general revenue fund, including any payments of the taxes made under protest];

(2) Twenty percent of the revenue derived from the rate of one-half cent on the dollar of the tax imposed by this act shall be deposited in the state transportation fund to be used for transportation purposes other than highways, as provided in section 226.225, RSMo. Thirty-three percent of this amount shall be used exclusively for capital improvements, excluding the operational costs, of public transportation facilities or projects authorized by section 226.225, RSMo;

(3) Two percent of the revenue derived from the rate of one-half cent on the dollar of the tax imposed by this act shall be deposited, in an equal amount, to the Missouri qualified fuel ethanol producer incentive fund and to the Missouri qualified biodiesel producer incentive fund, as established in chapter 142, RSMo, if existing. If not existing, then the full two percent shall be deposited in the Missouri qualified fuel ethanol producer incentive fund;

(4) Seventy-eight percent of the revenue derived from the rate of one-half cent on the dollar imposed by this act shall be deposited in the state road fund as established in section 226.220, RSMo; and

(5) All of the revenue derived from the additional sales tax rate of one-half cent on the dollar imposed by this act on all motor vehicles, trailers, motorcycles, mopeds and motortricycles shall be held and distributed in the manner provided by section 226.1000, RSMo.

2. The director of revenue shall keep accurate records of any payment of the tax made under protest. In the event any payment shall be made under protest:

(1) A protest affidavit shall be submitted to the director of revenue within thirty days after the payment is made; and

(2) An appeal shall be taken in the manner provided in section 144.261 from any decision of the director of revenue disallowing the making of the payment under protest or an application shall be filed by a protesting taxpayer with the director of revenue for a stay of the period for appeal on the ground that a case is presently pending in the courts involving the same question, with an agreement by the taxpayer to be bound by the final decision in the pending case.

3. Nothing in this section shall be construed to apply to any refund to which the taxpayer would be entitled under any applicable provision of law.

4. All payments deposited in the state general revenue fund that are made under protest shall be retained in the state treasury if the taxpayer does not prevail. If the taxpayer prevails, then taxes paid under protest shall be refunded to the taxpayer, with all interest income derived

therefrom, from funds appropriated by the general assembly for such purpose.

226.094. 1. The position of inspector general is hereby officially established within the department of transportation. The inspector general shall be subject to appointment by the director and shall report to and be under the general supervision of the director. However, the commission may request the inspector general to perform specific investigations, reviews, or other studies. The inspector general shall file an annual report with the joint committee on transportation oversight. Such report shall be available for public inspection.

2. In addition to any duties which may be assigned to the inspector general by the director, it shall be the duty of the inspector general to:

(1) Promote economy, efficiency, effectiveness, and public integrity in the administration of the programs and operations of the department;

(2) Detect and prevent fraud, waste, and abuse in programs and operations;

(3) Conduct and supervise investigations and reviews relating to department of transportation programs and operations;

(4) Provide independent and objective assistance to help assure the department is operated in compliance with the constitutions and laws of the United States and the state of Missouri; and

(5) Keep the commission, the director, and the director's staff fully and currently informed about any problems or deficiencies relating to the administration of department programs and operations and the necessity for and progress of any corrective actions taken.

3. To accomplish the duties of the inspector general, the inspector general may investigate, conduct reviews, or perform audits relating to the use of highway user fees and taxes by the department of transportation, the department of revenue, the office of administration, and the state highway patrol. The accounts and records of the department of transportation, the state highway patrol, the office of administration, the department of revenue and other parties which use or receive taxes or fees derived from highway users as an incident to their use or right to use the highways of this state shall be open to inspection and review by the inspector general, for the purpose of obtaining information necessary in the performance of the duties of the inspector general. The inspector general shall have the power to subpoena witnesses or obtain the production of records when necessary for the performance of the inspector general's duties. The inspector general may also investigate and review any contract entered into by the department of transportation and any other party to determine compliance with federal and state law.

4. To accomplish the duties assigned to the inspector general, the inspector

general shall maintain records of all investigations conducted by the inspector general, including any record or document or thing, any summary, writing, complaint, data of any kind, tape or video recordings, electronic transmissions, e-mail, other paper or electronic documents, records, reports, digital recordings, photographs, software programs and software, expense accounts, phone logs, diaries, travel logs, or other things, including originals or copies of any of the above. All such records shall be considered open records pursuant to the provisions contained in section 610.010, RSMo. Any records detained above which are prepared by the inspector general in conjunction with an investigation into a crime or suspected crime, or an investigation into an action that violates a civil law of this state, may be closed within the office of the inspector general during the investigation thereof of the matter until the matter becomes inactive, which shall be defined as an investigation in which no further action will be taken by the inspector general because it has decided not to pursue the case; expiration of the time to file criminal charges or civil suit or ten years after the commission of the act, whichever date earliest occurs; or finality of the conviction of all persons convicted on the basis of the information contained in the investigative report or termination of all civil action involving the information contained in the investigative report, by the exhaustion of or expiration of all rights of appeal by such person. All records not specifically closed by the above provisions shall be deemed to be an open record except as otherwise provided by subdivision (13) of section 610.021, RSMo.

226.200. 1. There is hereby created a "State Highways and Transportation Department Fund" into which shall be paid or transferred all state revenue derived from highway users as an incident to their use or right to use the highways of the state, including all state license fees and taxes upon motor vehicles, trailers, and motor vehicle fuels, and upon, with respect to, or on the privilege of the manufacture, receipt, storage, distribution, sale or use thereof (excepting the sales tax on motor vehicles and trailers, and all property taxes), and all other revenue received or held for expenditure by or under the department of transportation or the state highways and transportation commission, except:

- (1) Money arising from the sale of bonds;
- (2) Money received from the United States government; or
- (3) Money received for some particular use or uses other than for the payment of principal and interest on outstanding state road bonds.

2. Subject to the limitations of subsection 3 of this section, from said fund shall be paid or credited the cost:

- (1) Of collection of all said state revenue derived from highway users as an incident to their use or right to use the highways of the state;

- (2) Of maintaining the state highways and transportation commission;
- (3) Of maintaining the state transportation department;
- (4) Of any workers' compensation for state transportation department employees;
- (5) Of the share of the transportation department in any retirement program for state employees, only as may be provided by law; and
- (6) Of administering and enforcing any state motor vehicle laws or traffic regulations.

3. [For all future fiscal years,] The total amount of appropriations from the state highways and transportation department fund for all state offices [and], departments **and elective offices, except for the highway patrol; the department of revenue for actual costs of collecting taxes and fees derived from highway users as an incident to their use or right to use the highways of this state; and actual costs incurred by the office of administration for or on behalf of the highway patrol and employees of the department of revenue for actual collection costs as described in this subsection** shall [not exceed the total amount appropriated for such offices and departments from said fund for fiscal year 2001] **be zero beginning the first fiscal year following voter approval of this act and for all fiscal years thereafter. Appropriations to the highway patrol from the state highways and transportation department fund shall be made in accordance with article IV, section 30(b) of the Missouri Constitution. Appropriations allocated from the state highways and transportation department fund to the highway patrol shall only be used by the highway patrol to administer and enforce state motor vehicle laws or traffic regulations. The inspector general, as established in section 226.094, is authorized to conduct an audit of the state highways and transportation department fund to ensure compliance with this section.**

4. The provisions of subsection 3 of this section shall not apply to appropriations from the state highways and transportation department fund to the highways and transportation commission and the state transportation department or to appropriations to the office of administration for department of transportation employee fringe benefits and OASDHI payments, or to appropriations to the department of revenue for motor vehicle fuel tax refunds under chapter 142, RSMo, or to appropriations to the department of revenue for refunds or overpayments or erroneous payments from the state highways and transportation department fund.

5. All interest earned upon the state highways and transportation department fund shall be deposited in and to the credit of such fund.

6. Any balance remaining in said fund after payment of said costs shall be transferred to the state road fund.

[7. Notwithstanding the provisions of subsection 2 of this section to the contrary, any funds raised as a result of increased taxation pursuant to sections 142.025 and 142.372, RSMo,

after April 1, 1992, shall not be used for administrative purposes or administrative expenses of the transportation department.]

226.1000. 1. One-half of all of the revenue derived from the additional rate of one-half cent on the dollar imposed by this act on all motor vehicles, trailers, motorcycles, mopeds and motortricycles shall be dedicated for highway and transportation use and distributed pursuant to subsection 2 of section 30(b) of article IV of the Missouri Constitution.

2. Beginning on the effective date of this act, all of the remaining revenue derived from the additional sales tax rate of one-half cent on the dollar imposed by this act on all motor vehicles, trailers, motorcycles, mopeds and motortricycles, which is not distributed pursuant to subsection 1 of this section, shall be distributed as follows:

(1) Twenty percent shall be deposited in the state transportation fund to be used for transportation purposes other than highways, as provided in section 226.225, RSMo. Thirty-three percent of this amount shall be used exclusively for capital improvements, excluding the operational costs, of public transportation facilities or projects authorized by section 226.225, RSMo;

(2) Two percent shall be deposited, in an equal amount, to the Missouri qualified fuel ethanol producer incentive fund and to the Missouri qualified biodiesel producer incentive fund, as established in chapter 142, RSMo, if existing. If not existing, then the full two percent shall be deposited in the Missouri qualified fuel ethanol producer incentive fund; and

(3) Seventy-eight percent shall be deposited in the state road fund as established in section 226.220, RSMo.

Section B. This act is hereby submitted to the qualified voters of this state for approval or rejection at a special election which is hereby ordered and which shall be held and conducted on the first Tuesday in August, 2002, pursuant to the laws and constitutional provisions of this state applicable to general elections, and this act shall become effective on the first day of January after the provisions of this act have been approved by a majority of the votes cast thereon at such election and not otherwise.

Section C. The additional revenue provided by sections 144.020, 144.021, 144.440, 144.700 and 226.1000 of this act shall not be part of the "total state revenue" within the meaning of sections 17 and 18 of article X of the Missouri Constitution. The expenditure of this revenue shall not be an "expense of state government" under section 20 of article X of the Missouri Constitution.

Section D. At the general election on the Tuesday next following the first Monday in November, 2012, the secretary of state shall submit to the electors of this state the question

"Shall the additional revenues for transportation be renewed and extended?". If a majority of the votes cast thereon is for the affirmative the additional revenues shall be continued. If a majority of the votes cast thereon is for the negative, the rates included in sections 144.020, 144.021, 144.440, 144.700 and 226.1000 directing deposit and use of revenues pursuant to this act shall expire on July first following the election and return to the provisions in effect on January 1, 2002. If a majority of the votes cast thereon is for the negative, the motor fuel tax rate provided for in section 142.803 shall expire on July first following the election and return to seventeen cents per gallon.

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